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**MEMO ENDORSED**

March 27, 2017

**BY ECF:**

Honorable Valerie E. Caproni  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, NY 10007

USDC SDNY  
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**Re: United States v. Percoco, et al., 16 Cr. 776 (VEC)**

Dear Judge Caproni:

We represent Peter Galbraith Kelly, Jr. in the above matter. We submit this letter on behalf of Mr. Kelly and codefendant Joseph Percoco. We regret having to burden the Court with correspondence regarding the Government's March 24, 2017 discovery letter (Doc. No. 133), but because the April 6 conference is approaching, we feel it necessary address the points made by the Government in two footnotes.

First, the Government advises the Court that "certain documents are being processed for reproduction," but does not inform the Court of the volume or significance of those documents, or when the "reproduction" will occur. In fact, the documents at issue include more than 30,000 files provided by the "Energy Company" (identified in the Indictment), including emails between Mr. Kelly, Mr. Percoco, and the Government's cooperating witness, Todd Howe. These documents unquestionably are among the most central evidence in the case as to Mr. Kelly and Mr. Percoco.

The Government initially produced nearly the entirety of these materials as PDF images, with limited to no metadata (such as sender, recipient, or date), even though such metadata apparently was available from the Energy Company. Without this metadata, defense counsel is unable to sort these files in any meaningful way. When we brought this issue to the Government's attention, we were told that the Government produced the materials to us in the same format as they had been received from the Energy Company. We advised the Government that the production was not adequate for our preparation purposes and inquired whether the Government intended to ask the Energy Company immediately to reproduce the materials with metadata. The Government indicated that it would do so, but to date has given us no specific indication of when the metadata would be made available.

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Second, we made a request for a bill of particulars on behalf of Mr. Kelly a month ago, on February 28 (attached as Ex. A), and counsel for Mr. Percoco made his request—which to some degree mirrors Mr. Kelly’s request—on March 7, 2017 (attached as Ex. B). We made our requests for these bills of particulars early, so that the Government would have ample time to respond before the scheduled April 6 conference and so we would have sufficient information to be prepared to discuss a motion schedule with the Court. Our requests are not boilerplate submissions but instead are narrowly addressed to the central issues in this case. The information we seek is essential for us to defend this matter and will help determine what motions are necessary.

Yet, in the second footnote of their letter, without having conferred with defense counsel, the Government proposes to respond to our separate requests for a bill of particulars on April 10—four days *after* the pretrial conference. The particulars the Government provides will directly impact what motions will be necessary and the time needed to prepare them. We therefore respectfully ask that the Court direct the Government to respond to our requests for bills of particulars no later than the morning of April 4—two days before the conference. That will provide us with 48 hours to evaluate the Government’s response and assess how much time we will reasonably need to prepare motions.

Respectfully submitted,

/s/ Daniel M. Gitner

Daniel M. Gitner

Jun Xiang

Samantha J. Reitz

CC:

All Counsel (by ECF)

Defendants Kelly and Percoco's requests are DENIED. The Government must respond to the bill of particulars requests and re-produce the Energy Company documents according to the schedule set forth in the Government's March 28, 2017, letter.

SO ORDERED.



HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE

3/30/2017